

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TRUSTEES OF EMPIRE STATE CARPENTERS
ANNUITY, APPRENTICESHIP, LABOR-
MANAGEMENT COOPERATION, PENSION AND
WELFARE FUNDS,

Plaintiffs,

MEMORANDUM & ORDER
13-CV-4590 (JS) (GRB)

-against-

R. BAKER & SON ALL INDUSTRIAL
SERVICES, INC. doing business as
ALL INDUSTRIAL SERVICES INC.,

Defendant.

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APPEARANCES

For Plaintiffs: Charles R. Virginia, Esq.
Richard B. Epstein, Esq.
Virginia & Ambinder LLP
40 Broad Street, 7th floor
New York, NY 10004

For Defendant: No appearances.

SEYBERT, District Judge:

On August 4, 2014, Magistrate Judge Gary R. Brown issued a Report and Recommendation ("R&R") recommending that this Court deny Plaintiffs' pending motion for default judgment with leave to renew upon proper service of the Summons and Complaint upon Defendant R. Baker & Son All Industrial Services. (Docket Entry 12.) For the following reasons, the Court ADOPTS the R&R in its entirety.

BACKGROUND

Plaintiffs commenced this action against Defendant on August 14, 2013, seeking to confirm an arbitration award rendered in Plaintiff's favor. Plaintiffs claim that they properly served the Summons and Complaint upon Defendant on August 19, 2013 by serving a "Jane Doe" agent who refused to provide her name to the process server. (See Epstein Decl., Docket Entry 8, ¶ 18, Ex. E.) Defendant failed to appear in the action.

On November 27, 2013, Plaintiffs requested a Certificate of Default. (Docket Entry 5.) On December 2, 2013, the Clerk of the Court certified Defendant's default. (Docket Entry 6.) On December 26, 2013, Plaintiffs moved for default judgment. (Docket Entry 7.) Judge Brown's R&R recommends denial of Plaintiffs' motion for default judgment, with leave to renew upon proper service of the Summons and Complaint upon Defendant, on the ground that Plaintiffs failed to provide sufficient evidence of proper service.

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face

of the record.” Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of service of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Brown’s R&R to be comprehensive, well-reasoned, and free of clear error, and it ADOPTS the R&R in its entirety. Plaintiffs’ motion for default judgment is DENIED WITHOUT PREJUDICE and with leave to renew upon proper service of the Summons and Complaint upon Defendant. Plaintiffs are GRANTED sixty (60) days to effectuate service.

CONCLUSION

Judge Brown’s R&R is ADOPTED in its entirety. Plaintiffs’ motion for default judgment is DENIED WITHOUT PREJUDICE and with leave to renew upon proper service of the Summons and Complaint upon Defendant. Plaintiffs are GRANTED sixty (60) days to effectuate proper service.

SO ORDERED

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: September 11, 2014
Central Islip, New York